UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

OPINION NO. 477

Pacific Gas and Electric Company	Docket No. ER00-565-001 ER00-565-007

OPINION AND ORDER AFFIRMING INITIAL DECISION IN PART, REVERSING INITIAL DECISION IN PART, AND DENYING REHEARING

Issued: October 28, 2004

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FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company — Docket No. ER00-565-001, ER00-565-007

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APPEARANCES

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Howard Benowitz, Esq., Robert B. Gex, Esq., and Marco Gomez, Esq. on behalf of San Francisco Bay Rapid Transit District.

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Julia Moore, Esq. and Michael Ward, Esq. on behalf of California Independent System Operator.

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FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

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OPINION NO. 477

OPINION AND ORDER AFFIRMING INITIAL DECISION IN PART, REVERSING INITIAL DECISION IN PART, AND DENYING REHEARING

(Issued October 28, 2004)

1. This case is before the Commission on exceptions to the May 6, 2004 Initial Decision issued in this proceeding.[1] It concerns a Scheduling Coordinator Services Tariff (SCS Tariff) filed by Pacific Gas and Electric Company (PG&E) to recover certain costs associated with its role as Scheduling Coordinator for eight of its customers (collectively, the SC Customers),[2] who receive transmission service pursuant to contracts that predate

[1] *Pacific Gas and Electric Co.*, 107 FERC ¶ 63,030 (2004) (Initial Decision). The Initial Decision only resolves Phase I of the proceeding. Phase I addresses threshold liability issues, specifically whether PG&E's proposed SCS Tariff constitutes a "service," and, if so, whether it constitutes a "new service" with regard to PG&E's SC Customers. Phase II will address specific cost allocation issues with regard to the specific charge types delineated in the SCS Tariff.

[2] The SC Customers are San Francisco Bay Area Rapid Transit District (BART); the City and County of San Francisco (San Francisco); Dynegy Power Services, Inc. (Dynegy); Modesto Irrigation District (Modesto); Northern California Power Agency (NCPA); Sacramento Municipal Utility District (SMUD); Silicon Valley Power (SVP); and Turlock Irrigation District (Turlock). A settlement between PG&E and BART was approved by the Commission on January 28, 2004. *Pacific Gas and Electric Co.*, 106 FERC ¶ 61,054 (2004). Although Dynegy was a SC Customer through February 2000, it has not been an active party in this proceeding. On September 23, 2004, PG&E and Dynegy submitted an offer of partial settlement to the Commission. PG&E no longer acts as the Scheduling Coordinator for Dynegy, NCPA, SMUD and SVP.

the formation of the California Independent System Operator (CAISO). In this order, the Commission affirms the Initial Decision on a number of issues, most notably its determination that PG&E is providing a new service pursuant to its tariff. However, we reverse the Initial Decision's holding that extraordinary circumstances exist permitting a waiver of the notice requirements of the Federal Power Act (FPA). Additionally, we deny requests for rehearing pending in this proceeding.

2. This order benefits customers by appropriately allocating the CAISO's costs among its customers and preventing the trapping of these costs downstream.

Background

Procedural History

3. While the Initial Decision sets out the history of this proceeding in detail, we repeat the salient facts to provide necessary context for this order. As mentioned above, PG&E functions as the CAISO's Scheduling Coordinator for transmission customers who have already existing contracts, or Control Area Agreements,[3] with PG&E. As the Scheduling Coordinator for existing transmission customers, PG&E is billed by the CAISO for the costs that the CAISO incurs in providing the existing transmission customers access to the CAISO Controlled Grid. PG&E's proposed tariff is designed to recover these costs from its existing contract customers for what it believes is a new service. In the alternative, PG&E requested that the existing contracts with these customers be amended to include the collection of these costs.

4. On January 11, 2000, the Commission issued an order accepting the filing in the instant proceeding, suspending it, and making it conditionally effective on March 31, 1998, subject to refund.[4] Because PG&E had sought recovery of the identical costs in another proceeding before the Commission, the January 2000 Order deferred any action in the instant case pending a final decision in that one.[5]

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[3] Control Area Agreements are those Existing Contracts which also include provisions for control area service. Exh. S-1 at 8:2-11.

[4] *Pacific Gas and Electric Co.*, 90 FERC ¶ 61,010 (2000) (January 2000 Order), *reh'g denied*, 95 FERC ¶ 61,247 (January 2001 Order), *clarified*, 96 FERC ¶ 61,072 (2001).

[5] *Id.* at 61,023, *citing Pacific Gas and Electric Co.*, 83 FERC ¶ 61,212 (1998). In that case, PG&E sought recovery of these costs through the Transmission Revenue Balancing Account (TRBA) in the CAISO Tariff, by means of a proposed Transmission

5. In Opinion Nos. 458 and 458-A, the Commission denied PG&E's attempt to recover the contested costs by means of the TRBA Mechanism, or from customers other than its existing contract customers.[6] Accordingly, on December 16, 2002, PG&E and other parties requested that the Commission reactivate this proceeding. On May 15, 2003, the Commission issued an order lifting the abeyance and establishing hearing procedures.[7]

6. Requests for rehearing of our May 2003 Order were filed by NCPA, Modesto, SMUD, SVP, and the Transmission Agency of Northern California (TANC).

7. On August 11, 2003, the Presiding Judge issued an order phasing the proceeding. According to that Order, Phase I was to address liability issues and Phase II was to address cost allocation issues. The hearing on the Phase I issues was held between January 6 and January 15, 2004. The active parties were PG&E, the CAISO, the California Electricity Oversight Board (California Board), San Francisco, Modesto, NCPA, SMUD, SVP, Turlock, and Commission Trial Staff.

8. As mentioned above, on May 6, 2004, the Presiding Judge issued the Initial Decision at issue here, resolving the Phase I issues. The Initial Decision held that: (1) extraordinary circumstances exist that justify granting PG&E's request for waiver of the prior notice requirement; (2) PG&E's SCS Tariff service constitutes a new service from that which is provided under the Control Area Agreements; (3) given the Presiding Judge's finding that the SCS Tariff service constitutes a new service, PG&E's alternative proposal to amend the Control Area Agreements under section 205 of the FPA did not need to be addressed; (4) section 2.7 of the Responsible Participating Transmission Owner Agreement (RPTOA) governing relations between PG&E and the CAISO, does not require PG&E to engage in dispute resolution with the CAISO under the facts of this case because the two conditions required for dispute resolution have not been met; (5) arguments regarding whether the contract provisions in the Control Area Agreements absolve customers from liability for SCS costs are more appropriately addressed in Phase II of this proceeding.

Owner Tariff. We sometimes refer to this case as the TRBA proceeding in the discussion that follows.

[6] *Pacific Gas and Electric Co.*, Opinion No. 458, 100 FERC ¶ 61,156, *reh'g denied*, Opinion No. 458-A, 101 FERC ¶ 61,151 (2002), *order on remand*, 107 FERC ¶ 61,115 (2004).

[7] *Pacific Gas and Electric Co.*, 103 FERC ¶ 61,180 (2003) (May 2003 Order).

9. Briefs on exceptions were filed by NCPA, SMUD, Turlock, Modesto, San Francisco, SVP and Trial Staff. Trial Staff and PG&E filed briefs opposing exceptions.[8]

10. Having fully evaluated the Initial Decision, the parties' briefs, and the record before us, the Commission summarily affirms the Initial Decision's findings that: (1) PG&E's alternative proposal to amend the Control Area Agreements under section 205 of the FPA did not need to be addressed; (2) section 2.7 of the RPTOA does not require PG&E to engage in dispute resolution with the CAISO under the facts of this case because the two conditions required for dispute resolution have not been met; and (3) arguments regarding whether the contract provisions in the Control Area Agreements absolve customers from liability for SCS costs are more appropriately addressed in Phase II of this proceeding. We find that the Initial Decision properly decided these issues and the arguments on exceptions have failed to persuade us that the Initial Decision erred or that additional discussion is necessary.

Discussion

A. Requests for Rehearing of the May 2003 Order

11. The parties argue on rehearing that the Commission erred in not assigning a new effective date for PG&E's supplemental filing and failing to perform any analysis to determine if a five month suspension was necessary, consistent with the test established by the Commission in *West Texas Utilities Co*., 18 FERC ¶ 61,189 (1992). They further argue that their individual contracts preclude PG&E from assessing any new charges under the SCS Tariff. Specifically, SVP states that PG&E improperly seeks to collect charges under the SCS Tariff with respect to SVP purchases under two contracts SVP currently has with PG&E. TANC states that the SCS Tariff should not apply to certain transmission facilities on the California Oregon Transmission Project. Modesto states that the SCS Tariff should be rejected because it double charges Modesto for services already received under its contract with PG&E.

12. The Commission denies these requests for rehearing. With regard to PG&E's supplemental filing, the effective date was not at issue. The effective date was previously established in the January 2000 Order. There, we accepted PG&E's proposed SCS Tariff for filing, suspended it, set it for hearing (but held the hearing in abeyance), and conditionally granted waiver of notice to make it conditionally effective March 31, 1998, subject to refund. On March 27, 2003, PG&E supplemented its original SCS Tariff filing in order to update its SCS Tariff filing to reflect changes that occurred during the three

[8] In addition, on October 6, 2004, SMUD filed a motion to supplement its Brief on Exceptions or, in the alternative, a motion to lodge.

year period in which the proceeding was held in abeyance. PG&E's supplemental filing merely updated the record in this proceeding to update Scheduling Coordinator cost and credit information. Since PG&E's SCS Tariff rates are formula rates, there was no reason to treat PG&E's supplement as a new filing under section 205 of the FPA. Accordingly, there was no need to establish a new effective date since the filing did not change the formula rate.

13. Additionally, a determination of a suspension period was not necessary in these circumstances. Furthermore, to the extent the parties argue that we failed to determine the appropriateness of a five-month suspension with regard to PG&E's initial SCS Tariff filing, we addressed that issue in our January 2001 Order.

14. Finally, the arguments that the parties' contracts do not allow for the Scheduling Coordinator charges were addressed in the hearing and are addressed separately in this order.

B. The Initial Decision

1. Waiver of Prior Notice

a. Initial Decision

15. Under section 205(d) of the FPA, the Commission has authority to waive the statutory sixty day notice period for rate filings.[9] Here, PG&E filed its SCS Tariff with the Commission on November 12, 1999, but requested waiver of the notice period so that the tariff would be effective March 31, 1998, the date on which the CAISO commenced operation. The Initial Decision held that, due to extraordinary circumstances, PG&E's request should be granted.

16. In so holding, the presiding judge relied on the decisions in *California Independent System Operator Corporation*[10] and *Niagara Mohawk*,[11] in which the Commission found extraordinary circumstances supporting the waiver of the sixty day notice requirement. In her view, the circumstances were even more compelling here, as

[9] 16 U.S.C. § 824d(d) (2000).

[10] 86 FERC ¶ 61,122 (1999), *reh'g denied*, 101 FERC 61,021 (2002) (*1999 CAISO Decision*).

[11] 72 FERC ¶ 61,323 at 62,399, *reh'g denied*, 73 FERC 61,356 (1995) (*Niagara Mohawk*).

the CAISO was one of the first independent system operators in the nation, and the proper allocation of CAISO-related costs between existing and new customers "was an issue of first impression."[12] In particular, the Presiding Judge concluded, PG&E reasonably believed that it would be able to recover the contested costs by means of the TRBA mechanism of the CAISO Tariff. As she explained:

> Thus, when PG&E agreed to act as the [Scheduling Coordinator] on behalf of the SC Customers, permitting the ISO and California markets to move forward, it did so in reliance on the Commission's order approving ISO Tariff language that PG&E interpreted as expressly allowing PG&E to recover the SC [c]osts through the TRBA. It is clear that PG&E believed at the time it filed its [Transmission Owner] tariff that the TRBA was the appropriate vehicle for the recovery of such costs.[[13]]

17. In this regard, the Presiding Judge went on to find that the "only other course available to PG&E at that time would have been to file two *conflicting* tariffs – the [Transmission Owner] Tariff and the SCS Tariff – to recover the same costs from two different sets of customers," a course of action she viewed as "inefficient and wasteful."[14]

18. Under the circumstances presented, the Initial Decision thus determined, a denial of the requested effective date would unfairly penalize PG&E for its "good faith understanding" of the Commission-approved CAISO Tariff, and the Commission's October 1997 Order approving that tariff.[15] In this regard, the Initial Decision cited *Gulf States Utilities Co. v. FERC*, 1 F.3d 288, 293 (5th Cir. 1993) (*Gulf States*), which reversed the Commission's denial of waiver because the penalty imposed on the utility by the denial of the waiver was disproportional to the utility's error in failing to make a timely filing.

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[12] Initial Decision at P 28.

[13] *Id.* at P 29, citing Exh. PG&E-23 at 61:5-12, 63:3-18.

[14] *Id.* (emphasis in original).

[15] *Id.* at P 33. The Commission approved the CAISO Tariff in *Pacific Gas and Electric, et al.*, 81 FERC ¶ 61,122 (1997) (October 1997 Order).

b. Briefs on Exceptions

19. The SC Customers and Trial Staff disagree with the Presiding Judge's decision to waive notice and establish an earlier effective date on a number of grounds. Thus, they contend that PG&E's request does not fall into either of the two exceptions in which there is either: 1) a prior agreement or 2) detailed notice actually provided.[16] They further assert that the *1999 CAISO Decision* is not applicable to this case, and dispute the Presiding Judge's reliance on *Niagara Mohawk*. Rather, these parties rely on the Commission's decision in *City of Girard, KS v. FERC*,[17] which they maintain limited the extraordinary circumstances exception to situations in which the parties have previously agreed to an effective date, which is not the situation here.

20. In its Brief Opposing Exceptions, PG&E defends the reasoning of the Initial Decision on this issue, and argues that *Girard* is not applicable to this case because the *Girard* court expressly declined to determine whether the Commission had power to waive the notice requirements where there is no agreement between the parties.[18] In addition, PG&E states that subsequent decisions have recognized the Commission's authority to waive the notice requirement without any requirement of an agreement between the parties.[19]

21. PG&E goes on to contend that because the SC Customers have received substantial benefits from PG&E's acting as their Scheduling Coordinator, the Commission should accept its proposed effective date. It states that the SC Customers have used the CAISO Controlled Grid to conduct transactions under their Control Area Agreements, but have paid none of the SC Costs and that PG&E has borne these costs. PG&E contends that when the Commission rejected its original approach of billing the Transmission Owner Tariff customers for these costs, it noted that under cost causation principles the parties that receive the benefits – *i.e.*, the SC Customers – should pay for the costs.[20] PG&E argues that the SC Customers knowingly received significant

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[16] NCPA Brief on Exceptions at 76.

[17] 790 F.2d 919, 924 (D.C. Cir. 1986) (*Girard*).

[18] PG&E Brief Opposing Exceptions at 20, *citing Girard*, 790 F.2d at 924.

[19] *Id.* at 20, *citing California Public Utilities Commission v. FERC*, 988 F.2d 154 (D.C. Cir. 1993) (*California PUC*). We do not discuss *California PUC* because our decision not to grant PG&E's waiver request is not based on any theory of our lack of authority to do so.

[20] *Id.* at 31, *citing* Opinion No. 458 at P 30; Opinion No. 458-A at P 23.

financial benefits from PG&E's acting as their Scheduling Coordinator, therefore the SC Customers cannot now rely on claims of equity to shield them from the costs PG&E has incurred on their behalf.

c. Commission Decision

22. We reverse the Initial Decision on the waiver of the notice requirement. As both the Presiding Judge and the parties accurately note, the Commission's established policy is that "absent extraordinary circumstances," we will not grant waiver of notice when a filing for a new service is filed on or after the date service has commenced.[21] In our view, the Presiding Judge's conclusion that the extraordinary circumstances standard was met by PG&E was based on an erroneous assessment of the facts and misapplication of our precedent.

23. At the heart of the Presiding Judge's decision on this issue is her finding that PG&E reasonably relied on its view that it could recover these costs by means of the TRBA mechanism, and could not have known that the Commission would forbid this approach. This finding, however, is without factual foundation.

24. In neither our October 1997 Order accepting the CAISO Tariff, nor our order accepting PG&E's Transmission Owner Tariff and setting it for hearing,[22] did the Commission decide that PG&E was entitled to recover the costs at issue here by means of any provision of the CAISO Tariff or the proposed Transmission Owner Tariff. Indeed, the very act of setting the issue for hearing signified that the Commission had not decided the means by which PG&E might recover these costs. PG&E could not, then, have reasonably relied on these orders as indicating that the cost recovery it sought in the *TRBA* proceeding was a foregone conclusion. That PG&E initially chose this route to the exclusion of filing a tariff, or seeking to amend its existing contracts, was simply a business risk it chose to take.

25. We disagree with the Presiding Judge's finding that PG&E's filing an alternative tariff would have been inefficient and wasteful. This is exactly the course of action PG&E took once the Initial Decision in the *TRBA* proceeding was issued. We believe that this action by PG&E was reasonable and prudent at that time, and would have been

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[21] *Central Hudson Gas and Electric Corp., et al.*, 60 FERC ¶ 61,106, at 61,339, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson*).

[22] *Pacific Gas and Electric Co., et al.*, 81 FERC ¶ 61,323 (1997), *order on reh'g*, 82 FERC ¶ 61,324 (1998).

equally or more so earlier. Therefore, the Commission finds no compelling arguments against PG&E filing the SCS Tariff at an earlier date.

26. Nor do the cases cited in the Initial Decision support waiver of notice in the instant case. In *1999 CAISO Decision*, the Commission permitted a retroactive tariff change in order to preserve all of the parties' understanding of the tariff. There, the CAISO had relied on unclear tariff language in billing for congestion charges, and the Commission allowed the CAISO to change its tariff in order to conform to its actual billing practices. Furthermore, the parties were on notice of the change because, in fact, they had already been performing as if the change had been made. Had the Commission not permitted the CAISO to modify its tariff retroactively, the CAISO would have had to retroactively re-bill its customers. Here, however, PG&E has not been billing its customers since March 1998 in accordance with its SCS Tariff, and is not seeking to modify its tariff to align with current billing practices.

27. Similarly, the decision in *Niagara Mohawk* does not support the result reached by the Initial Decision. The result there was predicated on a finding that the Commission had jurisdiction over an agreement between the parties. Niagara Mohawk had entered into the agreement, but did not initially file it in the mistaken belief that it was not jurisdictional. Thus, the Commission allowed retroactive waiver to give effect to an agreement entered into at a time the parties believed it was not Commission jurisdictional. Here, however, there is no agreement between the parties. Additionally, PG&E did not have any doubt concerning our jurisdiction over the costs at issue. Rather, it chose another avenue by which to recover them.

28. PG&E's contention that *Gulf States* supports its request for waiver is unfounded. PG&E claims that the court in *Gulf States* reversed the Commission's denial of waiver because the penalty imposed on the utility by the denial of the waiver was disproportional to the utility's error in failing to make a timely filing.[23] However, PG&E fails to note that *Gulf States* involved a situation in which not only did the parties have actual notice of the rates underlying the waiver, but that "the proposed charges [were] provided for by the … agreement."[24] That court found that Cajun Electric Power Cooperative had notice of the increases and had, without protest, paid the bills containing those increases.[25] This

[23] PG&E Brief on Exceptions at 25 n.89, *citing Gulf States*, 1 F.3d at 293; Initial Decision at P 33.

[24] *Id.* at 293.

[25] *Id.*

is not applicable to the case at hand, in which the SC Customers did not have actual notice of the SCS Tariff rates and had not been paying them, with or without protest, during the period for which waiver is requested.

29. Finally, that the SC Customers may have temporarily received free benefits from PG&E does not absolve PG&E from failing to fulfill its statutory obligation to make an appropriate filing in a timely fashion.

30. In sum, neither the factual situation presented, nor the precedent relied on by the Initial Decision, supports a finding of extraordinary circumstances under which waiver of notice is appropriate under *Central Hudson*. Therefore, the effective date of the SCS Tariff is January 12, 2000, sixty days after filing.

2. Whether the SCS Tariff Constitutes a New Service

a. Initial Decision

31. In the Initial Decision, the Presiding Judge first determined that PG&E is indeed providing a service under the SCS Tariff. She based this ruling on the fact that the CAISO Tariff governs access to the CAISO Controlled Grid and requires that only CAISO-certified Scheduling Coordinators may schedule transactions using the CAISO Controlled Grid.[26] In this context, the Initial Decision emphasized that SC Customers are required to have a CAISO-certified Scheduling Coordinator in order to use the CAISO Controlled Grid for transmission of power. The judge found that while none of the SC Customers disputed that PG&E has functioned and, in some cases, continues to function as a CAISO-certified Scheduling Coordinator for them, the parties did dispute that the pass through of these CAISO charges constitutes a "service."[27]

32. In the Presiding Judge's view, the issue of whether the pass through of costs PG&E is billed by the CAISO associated with its role as an SC constitutes a "service" was governed by the Commission's decisions in Opinion Nos. 463 and 463-A.[28] The judge determined that the Commission's approval in those orders of PG&E's Pass-Through Tariff, which was designed to pass through the CAISO's Grid Management

[26] Initial Decision at P 59.

[27] *Id.* at P 52 (citations omitted).

[28] *California Independent System Operator Corp.*, 99 FERC ¶ 63,020 (2002), *aff'd in relevant part*, Opinion No. 463, 103 FERC ¶ 61,114 (2003), *order on reh'g*, Opinion No. 463-A, 106 FERC ¶ 61,032 (2004) (*GMC*).

Charge to its existing contract customers, resolved both the "service" and "new service" issues in PG&E's favor.[29] In that case, PG&E's tariff was intended to recover, on a dollar-for-dollar basis, certain costs that it was being or had been charged by the CAISO.[30] In approving this tariff, Opinion Nos. 463 and 463-A concluded that PG&E was billing for a new and different service than what the existing contract customers had already been receiving under their contracts.[31]

33. Similarly, the Initial Decision relied on Opinion Nos. 463 and 463-A in rejecting the parties' claims that the SCS Tariff costs were not caused by the SC Customers, nor incurred for their benefit. Rather, the judge observed, in those orders the Commission had concluded that providing customers with access to the CAISO grid is a benefit not only because it is the only way that they could have continued to receive transmission service, but also because of, among other things, the increased reliability of the grid and the new market opportunities that arise as a result of the unified operation of the regional grid.[32]

34. Turning to the issue of whether the service provided by PG&E was a "new service," the Initial Decision found that Commission precedent supported the view that it was. As a factual matter, the judge determined that the Control Area Agreements at issue in this proceeding did not provide for Scheduling Coordinator service. As in the *GMC* proceeding, the judge explained, the Control Area Agreements were generally "entered into before the formation of the ISO," so that none of them "address the role of [a Scheduling Coordinator]."[33] Furthermore, the judge found, only "[w]hen the ISO assumed operational control of the grid … was the role of the [Scheduling Coordinator] created."[34] She rejected the claim put forth by the parties that the Scheduling

[29] Opinion No. 463, 103 FERC ¶ 61,114 at P 1. That case involved all of the SC Customers who are active parties in this proceeding.

[30] Initial Decision at P 53, *citing* Opinion No. 463, 103 FERC ¶ 61,114 at P 40.

[31] *Id.* at P 53, *citing* Opinion No. 463, 103 FERC ¶ 61,114 at P 40-53.

[32] *Id.* at P 54, *citing* Opinion No. 463-A, 106 FERC ¶ 61,032, at P 27-28.

[33] *Id.* at P 86.

[34] *Id.*

Coordinator services were the same as scheduling service under the Control Area Agreements, citing Mr. Bray's testimony distinguishing the two.[35]

35. The Presiding Judge next concluded that the parties' attempt to distinguish the SCS Tariff from the Pass Through Tariff approved in Opinion Nos. 463 and 463-A was unavailing. In this context, the judge explained,

> the SC costs PG&E proposes to pass through are those costs PG&E incurs from the CAISO for control area services; *i.e.*, Ancillary Services (spinning reserve, non-spinning reserve, replacement reserve, automatic generation control/regulation, black start and voltage support), Imbalance Energy, transmission losses, UFE, and Neutrality Adjustment charges…. Both types of SC costs relate to or result from the ISO's maintaining and operating the regional transmission grid and Control Area. Without the ability to procure Ancillary Services in accordance with the provisions of the ISO Tariff, the ISO would not be able to maintain operational control of the grid, and the SC Customers would not be able to continue to receive reliable transmission service.[[36]]

The judge therefore concluded that if the costs associated with the CAISO's operation of the Ancillary Service and Imbalance or Real-Time Energy Markets constituted a new service, it followed that the pass-through of the CAISO's costs of procuring such services in these markets must constitute a new service.

36. The Initial Decision also rejected the parties' reliance on the Commission's Opinion Nos. 459 and 459-A.[37] While in those cases the Commission concluded that PG&E's purported Reliability Service charges were inherently included in contracts that were executed prior to restructuring, the SC Costs at issue here, like the GMC costs, were not. In the judge's view, the Control Area Agreements could not have anticipated the difference between the CAISO's requirements for Ancillary Services and those specified in the Control Area Agreements. Therefore, the Presiding Judge concluded that the fact that customers self-provided "ancillary services" under their contracts did not mean that those contracts inherently satisfied the "Ancillary Services" requirements of the CAISO

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[35] *Id.* at P 87, citing Exh. PGE-22 at 15:11-32:9.

[36] *Id.* at P 90, citing Exh. PGE-2 at 4:20.

[37] *Pacific Gas and Electric Co.*, Opinion No. 459, 100 FERC ¶ 61,160, *reh'g denied*, Opinion No. 459-A, 101 FERC ¶ 61,139 (2002) (*Reliability Services*).

as part of their firm service. Additionally, the judge determined that the SC costs are not an intrinsic part of pre-CAISO transmission service as Reliability Service costs are, and the method used to determine the underlying charges is different.[38]

37. In this context, Initial Decision rejected the parties' claim that they would be double charged for SC costs. When an SC Customer self-provides its Ancillary Services obligations, in whole or in part, the judge explained, the CAISO reduces the amount of Ancillary Services which it must procure in its markets for that customer.[39]

38. The Initial Decision went on to address and reject various other arguments by the parties that the SCS Tariff did not represent a new service. The Presiding Judge found that the SC Customers' arguments that the SCS Tariff is not a new service lacked merit. She contended that since the SC Customers need a Scheduling Coordinator to obtain access to the CAISO-controlled grid and the Control Area Agreements did not provide that PG&E should perform the role of Scheduling Coordinator, PG&E is performing a new service in its role as Scheduling Coordinator. She relied on the Commission's *WEPCO* decision that the Commission will not "infer an obligation to provide a service that is not explicitly required."[40]

39. According to the Presiding Judge, PG&E was not already obligated to provide Scheduling Coordinator service in order to fulfill its obligations under the contracts.[41] The Initial Decision stated that the SC Customers benefit from access to the CAISO Controlled Grid and the reliability of the grid.[42] The SC Customers argued that PG&E

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[38] Initial Decision at P 101, *citing* Exh. PGE-23 at 73:17-74:2 (*quoting Pacific Gas and Electric Co.*, 95 FERC ¶ 63,022 at 65,212 (2001), *aff'd*, Opinion No. 459, 100 FERC ¶ 61,160, *reh'g denied*, Opinion No. 459-A, 101 FERC ¶ 61,139 (2002) (RS Initial Decision)).

[39] *Id.* at P 103, *citing* Exh. JE-1, Original Sheet No. 94, section 2.5.20.2. The Presiding Judge states that the customers will not be double charged for these ancillary services because, to the extent they self-supply, PG&E will credit their account.

[40] *Id.* at P 106 (citations omitted).

[41] *Id.* at P 107.

[42] *Id.* at P 108-10, *citing Midwest Independent Transmission System Operator Corp.*, Opinion No. 453, 97 FERC ¶ 61,033 at 61,169 (2001), *reh'g denied in part*, Opinion No. 453-A, 98 FERC ¶ 61,141 at 61,412 (2001), *reh'g denied*, 99 FERC ¶ 61,258, *modified on other grounds*, 101 FERC ¶ 61,113 (2002) (requiring grid users to pay for services regardless of whether the benefits were requested because grandfathered

was obligated under their contracts to provide firm transmission service, which meant that PG&E was already obligated to take the steps necessary to enable it to provide that service, and the creation of the CAISO did not relieve PG&E of that obligation.

40. The Presiding Judge stated that this argument was raised and rejected by the Commission in the *GMC* case. She observed that as in the *GMC* case, the CAISO did not exist when these contracts were entered into and they were predicated on PG&E being the control area operator. Now, however, the CAISO is the control area operator. The Presiding Judge reasoned that there is no reason to believe that any of the Control Area Agreements were intended to either foresee or cover these Scheduling Coordinator related costs. Consequently, the Initial Decision ruled that PG&E was not already obligated to provide these Scheduling Coordinator services to its customers under their respective Control Area Agreements.

b. Parties' Positions

41. The SC Customers claim that PG&E is not providing a service, new or otherwise. They claim that PG&E is acting as Scheduling Coordinator in order to implement the Control Area Agreements and that, therefore, the Commission should not allow it to pass the costs through to the SC Customers because PG&E is only incurring the cost in order to fulfill its existing obligations.[43] SMUD and SVP argue that there has there has been no change in the service they received under their Control Area Agreements since PG&E became a Scheduling Coordinator. SVP states that the fact that PG&E now must be something called a "Scheduling Coordinator" in order to provide that service does not change the nature of the service. Similarly, SMUD argues that the Presiding Judge erred because under its current Control Area Agreement, SMUD had rights to services including transmission service, and PG&E remains contractually obligated to provide SMUD with the same transmission service.

42. San Francisco contends that the Initial Decision does not undertake the analysis required to support a finding that the SCS Tariff constitutes a new service. In San Francisco's view, the fact that the existing contracts do not include a service named "scheduling coordinator service" is not determinative.[44] It goes on to argue that the

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wholesale load benefits from the CAISO); Opinion No. 453-A, 98 FERC ¶ 61,141 at 61,412; and Opinion 463, 103 FERC ¶ 61,114 at P 25 (stating that all users of the CAISO Controlled Grid, including those served through non-grid facilities, benefit from the operation of a regional grid).

[43] *See generally* NCPA Brief on Exceptions; SVP Brief on Exceptions.

[44] San Francisco Brief on Exceptions at 5, *citing* Initial Decision at P 87.

Commission requires an actual analysis of the services provided under the Control Area Agreements as compared with the alleged new service rather than a finding based only on the fact that the precise words now used to provide the service do not appear in the Control Area Agreements.[45] Furthermore, both SMUD and SVP contend that the Initial Decision erroneously relied on the internal costs that PG&E incurs, costs which are not passed through the SCS Tariff and which they contend are irrelevant to the "service" and "new service" determination.[46]

43. The SC Customers further argue that PG&E's acting as a Scheduling Coordinator has not conferred any new or expanded rights with respect to the CAISO Controlled Grid.[47] San Francisco, for example, argues that the "benefits" relied on by the Presiding Judge, assuming they are real, flow not from the SCS Tariff but from the CAISO's existence, and that the costs of its existence are paid through the GMC.[48]

44. San Francisco argues that the Initial Decision's failure to rely on the *Reliability Services* decision as relevant precedent is not consistent with the record in this case. According to San Francisco, its Control Area Agreement explicitly includes scheduling and ancillary services in a number of provisions analogous to the services at issue in the *Reliability Services* orders.[49] San Francisco also argues that the Initial Decision contains no explanation of how firm transmission service could possibly be provided without scheduling and ancillary services.

45. San Francisco also argues that the Presiding Judge's treatment of the "double-charging" issue reveals the fallacy of the new service determination. It contends that the Initial Decision relies on PG&E's claim that to the extent customers already provide the "services" they are charged for under the SCS Tariff, they will be credited and not

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[45] *Id.* at 5, *citing* Order No. 463-A at P 27-33.

[46] SVP Brief on Exceptions at 20-21; SMUD Brief on Exceptions at 25. SMUD states that PG&E witness Mr. Bray testified that PG&E does not propose to charge its SC Customers for the functions described in his testimony, because "[t]he costs of performing the functions described above are internal to PG&E. The charges for SCS Tariff service are based solely on CAISO-imposed costs, and not any costs internal to PG&E."

[47] *See, e.g.*, SMUD Brief on Exceptions at 30.

[48] San Francisco Brief on Exceptions at 9, *citing* Initial Decision at P 108-110.

[49] *Id.* at 6-7, *citing* Exh. CSF-1 at 12-13.

charged again.[50] It argues that the recognition that the "services" provided under the SCS Tariff might be covered, at least in part, by the existing contracts should not go just to proper allocation and accounting but to the whole "new service" determination. It claims that if the SCS Tariff was truly a "new service" there would be no risk of double-charging because customers would not already be receiving it or paying for it under their Control Area Agreements.

46. Turlock argues that PG&E is not providing a service because to provide a service, a utility must provide an up-front definition of the activities that will be performed or the product to be provided. It also argues that the provision of a service requires that the customers agree to accept the cost of that service at a rate the customer understands. Turlock states that the Commission denied a similar pass-though of CAISO charges for similar formula rate because "the Commission generally requires formula rates to be specific enough for any reasonably knowledgeable party to be able to calculate for itself what charge will be produced by the formula."[51] Turlock claims that the SCS Tariff does not meet this requirement and therefore, the Commission should not allow PG&E to pass the costs through to the SC Customers.

47. Modesto states that PG&E seeks to pass-through any and all CAISO charges without Commission review. It cites to section 5.2(f), which would allow PG&E to pass through any "other charges reflecting costs incurred by the CAISO or adjustments made by CAISO to previous charges."[52] Modesto states that there is no breakdown of services into subservices. Modesto also points to several items that PG&E seeks to pass through that are not services.[53]

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[50] *Id.* at 8, *citing* Initial Decision at P 36.

[51] Turlock Brief on Exceptions at 26, *citing* Opinion No. 459, 100 FERC ¶ 61,160 at P 22.

[52] Modesto Brief on Exceptions at 17, *citing* SCS Tariff at § 5.2(f).

[53] For example, Modesto cites § 5.2(e), which it states includes the cost of procuring additional ancillary services that neither PG&E nor the Control Area Agreement Customers need and it claims is not associated with any service, Modesto Brief on Exceptions at 18, and § 5.2(d) which it claims charges for congestion costs not associated with a service; and Unaccounted For Energy & Neutrality Adjustment charges which, Modesto claims, PG&E witness Bray admits are not described as services in the tariff. *Id.* at 19.

48. Modesto also argues that PG&E became a Scheduling Coordinator in order to meet its obligations under its current contracts and that, therefore, this is not a new service. Modesto argues that all control area services are included in the underlying contract. It contends that PG&E merely substituted one process for another, and this is not a new service. Modesto also argues that allowing a utility to claim that it is providing a new service simply by changing process would allow either party to unilaterally amend a contract by changing its internal processes.

49. The SC Customers generally contend that the Commission's determination in the *GMC* case is inapplicable to the SCS Tariff costs. NCPA states that the *GMC* case focused on the GMC itself, which was a pass-through of administrative overhead. It claims that the costs here are for "services" of other items which were addressed in the rates, terms and conditions of their current contracts. In addition, NCPA states that the services at issue here include ancillary services which were fully provided as an intrinsic part of the Control Area Agreements.

50. NCPA, San Francisco and Turlock claim that the Commission focused on specific costs involved in the *GMC* proceeding that are qualitatively different from any that could be included in the Control Area Agreement contracts. They argue that, unlike the SCS Tariff, the GMC does not go to pay for ancillary services, energy purchases or any other commodity. It claims that in the *GMC* order, the Commission emphasized that the GMC was a new service because the services were not inherent in the underlying contract and could not be self-provided under the contracts. Therefore, NCPA claims that the costs can only be passed-through if they cannot be recovered under the contracts.[54]

51. In addition, NCPA argues that Opinion No. 463-A is explicit that the issue of whether service can be self-provided is key to the analysis.[55] It contends that although the Initial Decision said that the customer's ability to self-provide did not stop the

[54] NCPA Brief on Exceptions at 33, *citing Midwest Independent Transmission System Operator Corp.*, 106 FERC ¶ 61,337 at P 18 (2004).

[55] *Id.* at 29-30, *citing* Opinion No. 463-A at P 37: ("the very premise of our reasoning was that the parties could not self-provide such services under their [Control Area Agreements], but that only the ISO could provide the services in question in the new post-ISO world.")

Commission from concluding that a certain component of the GMC was a new service,[56] the Commission found that the services cannot be self-provided and reversed the judge on that point.[57]

52. On October 6, 2004, SMUD filed a motion to supplement its brief on exceptions filed on June 7, 2004. SMUD states that the supplement is warranted in order to address an order issued September 16, 2004 in a separate proceeding involving the Midwest Independent System Operator Corporation (MISO).[58]

53. SMUD states in its motion to supplement its brief that the *MISO* case makes clear that the SCS Tariff does not represent a new service for the purpose of the actual ancillary services that SMUD self-provides. According to SMUD, *MISO* determined that because the transmission usage charges and related costs at issue there are similar to the reliability-related dispatch costs at issue in Opinion Nos. 459 and 459-A, then such costs should not be charged to the customers with grandfathered contracts and the transmission owner must bear the costs at least until the parties seek to modify their grandfathered contracts to recover such costs. SMUD argues that the SC costs for ancillary services are substantially similar to the redispatch costs associated with reliability services in Opinion No. 459 and must be distinguished from the GMC in Opinion No. 463 and 463-A.

c. Commission Decision

54. The Commission affirms the Initial Decision on the new service issue and denies the parties' exceptions on this issue in their entirety. We agree with the Presiding Judge that, based on the record before us as interpreted by the applicable precedent, PG&E is providing a service to its SCS Tariff customers, and that it is a new service, because it is not a service which is contemplated by PG&E's existing contracts with these customers.[59]

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[56] Initial Decision at P 95.

[57] NCPA Brief on Exceptions at 30, *citing* Opinion No. 463-A at P 42.

[58] *Midwest Independent Transmission System Operator*, 108 FERC ¶ 61,236 (2004) (*MISO*).

[59] In our view, the issue of whether PG&E is performing a "service" is logically subsumed in that of whether it is performing a "new service," and we therefore do not address it separately.

55. Certain crucial elements of the factual background do not appear to be in dispute. As the Initial Decision explained in some detail, the CAISO Tariff requires that in order to reach the grid, each market participant must have a CAISO-certified Scheduling Coordinator. [60] Under the CAISO Tariff, only CAISO-certified Scheduling Coordinators can schedule transactions using the CAISO-controlled grid. Prior to the establishment of the CAISO, PG&E was a control area operator, as were San Diego Gas & Electric and Southern California Edison Company. However, pursuant to our October 1997 Order approving the formation of the CAISO, the CAISO became the control area operator and the CAISO Controlled Grid comprised the service territories of PG&E, SDG&E and SoCal Edison. [61]

56. With the merging of the three control areas into one, the CAISO needed the most efficient means by which to attain information regarding generation and load in order to serve existing transmission contract customers. As a result, the former control area operators, through the RPTOAs became Scheduling Coordinators. Pursuant to the RPTOA between the CAISO and PG&E, PG&E acts in the role of Scheduling Coordinator on behalf of existing rightsholders.

57. Within this context, the Commission finds that the services performed by PG&E under its SCS Tariff represent a "new service" to its existing contract customers, which was not covered by the terms of those contracts. As the Initial Decision correctly observed, under our precedent a new service is one that the utility has not obligated itself to provide under an existing contract.[62] It is self-evident that PG&E did not obligate itself to perform as a CAISO Scheduling Coordinator under its existing contracts, as the role itself and the responsibilities and obligations that it entails did not exist at the time these contracts were entered into, when the CAISO was not yet a twinkle in the California legislature's eye. Thus, it is no surprise that none of the Control Area Agreements makes reference to PG&E playing such a role.

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[60] Initial Decision at P 12.

[61] *Pacific Gas and Electric Co.*, 81 FERC ¶ 61,122 (1997).

[62] Initial Decision at P 74, citing *Wisconsin Electric Power & Light Co.*, Opinion No. 321, 46 FERC ¶61,019 at 61,111 & n.7, *reh'g denied*, Opinion No. 321-A, 48 FERC ¶ 61,247 (1989), *aff'd sub nom. Wisconsin Public Power, Inc. v. FERC*, 918 F.2d 225 (D.C. Cir. 1990).

58. To a large extent, the arguments of the SC Customers to the contrary on this issue simply fail to come to grips with the new market structure that commenced with the establishment of the CAISO. The Commission rejected similar arguments by the parties to existing contracts in Opinion No. 463-A:

> As a Commission staff witness observed, with the formation of the ISO in California, there have been "massive" and "fundamental changes" in the manner in which electricity is sold and distributed there, so that "the complexities of operating the transmission system have increased exponentially." The ISO GMC and PG&E's [Pass Through Tariff] reflect this situation.[63]

Arguments by the existing contract customers here attempting to demonstrate that various elements of their contracts cover the services in question – such as San Francisco and Modesto's claim that their Control Area Agreements already provide for "scheduling"[64] — like their unavailing arguments in the *GMC* case, fail because they look to "isolated elements of roles of the ISO and PG&E, rather than [the] cohesive whole" of the CAISO system and PG&E's role in it as Scheduling Coordinator.[65]

59. The evidence in the record reveals that as a CAISO Scheduling Coordinator, PG&E has taken on new responsibilities. Under this new role, PG&E is responsible for submitting to the CAISO balanced schedules. PG&E is responsible for providing the CAISO with all individual schedules between the SC Customers to the extent such information is available under the existing contracts.[66] For example, PG&E is required to submit Day-Ahead and Hour-Ahead schedules for load that PG&E scheduled on behalf of the SC Customers, submit demand schedules to the CAISO, provide Ancillary Services, provide annual and weekly forecasts, comply with ISO Protocols, maintain a 24-hour scheduling center, and submit detailed operating information to the CAISO.[67]

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[63] Opinion No. 463-A, 106 FERC ¶ 61,032 at P 25 (citations omitted).

[64] San Francisco Brief on Exceptions at 6; Modesto Brief on Exceptions at 22-26.

[65] Opinion No. 463-A, 106 FERC ¶ 61,032 at P 25.

[66] *See* Tr. 902:4-13 (Bray); Exh. PGE-22 at 11.

[67] Exh. JE-1, § 2.2.3-2.2.4 (Sheet Nos. 13-14), § 2.2.7 (Sheet No. 14)), § 2.2.11 (Sheet No. 21). With regard to ancillary services, under section 4.1 of the RPTOA,

60. The arguments by the SC Customers that the *GMC* case is conceptually distinguishable do not pass muster. Of course, the costs to be collected by the SCS Tariff are not identical to those covered by the Pass Through Tariff approved there. The costs at issue in the *GMC* case were for CAISO overhead, while the costs in the instant case are those incurred by the CAISO and billed to PG&E as the Scheduling Coordinator for the SC Customers. However, there is no doubt that both sets of costs, as the Presiding Judge found, are CAISO-created costs arising from the CAISO's obligation to administer the CAISO-controlled grid.[68]

61. Various SC Customers argue that the SCS Tariff cannot be a new service because the RPTOA provides for self-provision of these existing services. Specifically, they rely on section 4.2 of the RPTOA between the CAISO and PG&E, which provides that:

> Self-provision of Ancillary Services for Existing Rightsholders Pursuant to Existing Contracts shall be deemed to satisfy the ISO's Ancillary Service standards, as set forth in the ISO Tariff Sections 2.5.2.1, 2.5.20 and the related ISO Protocol provisions. The ISO will not procure Ancillary Services for the amount of Ancillary Services self-provided for the Existing Rightsholder or charge the Responsible [Participating Transmission Owner] for amounts already self-provided. To the extent the Existing Rightsholder does not self-provide Ancillary Services but purchases Ancillary Services from the Responsible [Participating Transmission Owner], the Responsible [Participating Transmission Owner] will provide the Ancillary Service pursuant to the ISO Tariff.

62. The SC Customers fail to recognize that the ancillary service requirements set forth in section 2.5.2.1 of the CAISO Tariff represent new standards. In this regard, section 2.5.2.1 of the CAISO Tariff states that:

> the ISO shall set the required standard for each Ancillary Service necessary to maintain the reliable operation of the ISO Controlled Grid.

PG&E may self-provide or purchase from the CAISO its share of ancillary services. In accordance with CAISO Tariff section 2.4.4.4.4.5, the CAISO will provide PG&E with details of its ancillary service calculations so that PG&E may, in its judgment, determine whether the ancillary services result in any shortfalls or surpluses in requirements under existing contracts.

[68] *See* Initial Decision at P 90.

> Ancillary Services standards shall be based on WSCC Minimum Operating Reliability Criteria (MORC) and ISO Controlled Grid reliability requirements. The ISO Grid Operations Committee, in conjunction with the relevant reliability council (WSCC), shall develop these Ancillary Services standards to determine reasonableness, cost effectiveness, and adherence to national and WSCC standards. The standards developed by the ISO shall be used as a basis for determining the quantity and type of each Ancillary Service which the ISO requires to be available.

63. While it may be true that there has not been a change in the physical characteristics of the ancillary services provided under the Control Area Agreements, it is nonetheless a fact that an entity such as the CAISO will operate under different standards than did PG&E with regard to ancillary service requirements, since it is operating a grid which comprises what were previously three separate control areas. The CAISO is responsible for reliable operation of the grid and dispatch of bulk power supplies in accordance with regional and national reliability standards, including transmission planning and scheduling generation, imports, exports, and wheeling in the markets that are Day-Ahead and Hour-Ahead of actual operations.[69] Additionally, it is highly significant that the CAISO has established competitive markets for ancillary services and imbalance energy.[70] Thus, the situation is fundamentally different from that in which PG&E procured ancillary services in a non-competitive environment.

64. Furthermore, PG&E, as Scheduling Coordinator, is assigned the costs associated with the CAISO's ancillary service requirements, pursuant to section 2.5.2.1 of the CAISO Tariff. While SC Customers may still self-provide certain ancillary services, section 4.2 of the RPTOA provides that to the extent that the SC Customers meet the standards set out in section 2.5.2.1, they will not be responsible for paying for those ancillary services which are self-provided.[71]

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[69] Exh. PGE-22 at 8.

[70] *Id.*

[71] Section 2.5.2.4 of the CAISO Tariff lists Ancillary Services which may be self-provided. These include Regulation, Spinning Reserve, Non-Spinning Reserve and Replacement Reserve.

65. However, merely because section 4.2 of the RPTOAs allows SC Customers to self-provide ancillary services does not mean that the SCS Tariff costs do not represent a new service. As we have explained, the standards under which the CAISO operates are new and different from the standards under which PG&E operated as a control area operator. PG&E's pass-through of costs associated with procuring ancillary service pursuant to the standards set out in section 2.5.2.1 of the CAISO Tariff are what is at issue in this proceeding. To the extent that SC Customers self-provision of ancillary services meets these new standards, they will be entitled to credits and will be addressed in Phase II of this proceeding.

66. The Commission will reject SMUD's motion to supplement its brief and motion to lodge. In any event, we reject SMUD's contention that the SC costs for ancillary services at issue here are more akin to reliability services and should therefore be disallowed, absent a contract revision. As the Initial Decision made clear:

> Unlike the reliability service costs that the Commission concluded were inherently included in contracts that were executed prior to restructuring, the SC costs at issue here, were not included in any of the [Control Area Agreements]. The Ancillary Services requirements of the ISO postdate the [Control Area Agreements] which were negotiated before the ISO came into existence, and therefore the [Control Area Agreements] could not have anticipated the difference between the ISO's requirements for Ancillary Services and those specified in the [Control Area Agreements]. Therefore, it is wrong to conclude that merely because customers self-provided "ancillary services" under their contracts, those contracts inherently satisfied the "Ancillary Services" requirements of the ISO as part of their firm service.[72]

In our view, the same holds true for the costs addressed in *MISO*.

The Commission orders:

(A) The Initial Decision is hereby affirmed in part and denied in part, as discussed in the body of this order.

[72] Initial Decision at P 99.

(B) The requests for rehearing are hereby denied.

By the Commission. Commissioner Kelliher dissenting in part with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company — Docket Nos. ER00-565-001, ER00-565-007

(Issued October 28, 2004)

Joseph T. KELLIHER, Commissioner *dissenting in part*:

I dissent from the section of the order that finds PG&E is performing a new service for its wholesale transmission contract customers, known as Control Area Agreement customers, effectively allowing PG&E to pass through to them certain CAISO charges: in this case, costs associated with PG&E's role as a Scheduling Coordinator. In my view, the transmission service that these Control Area Agreement customers receive is not a new service warranting the imposition of costs that would otherwise be unrecoverable under the existing transmission contracts. Through these existing transmission contracts, PG&E is obligated to provide firm transmission service. The creation of the CAISO did not relieve PG&E of that obligation. I believe the provision of firm transmission service under the grandfathered Control Area Agreements encompasses scheduling services. Accordingly, I would reverse the Initial Decision determination that PG&E is providing a new service and grant the exceptions on this issue.

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Joseph T. Kelliher